**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Court's order whether the case is or not approved for reporting
(Chapter VIII, Rule 32(2)(b)
Description of Case

Crl. Jail Appeal No. 350 of 2004

Dated of decision: 29-6-2006

**A.F.R. (Approved for Reporting)**
~~Not Approved for Reporting~~

Date:- 29-6-2006 Initials of Judge

**Note:-** Bench Reader will attach this at the tip of the first page of the judgment when it is put up before the judge for signature.

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Criminal Jail Appeal No. 350 of 2004**

Dinesh Chandra
S/o Bhawani Ram
R/o Village Saula Patwari Kshetra Dewlikhet,
Tahsil Ranikhet
District-Almora .....Appellant

**Versus**

State of Uttaranchal .....Respondent

Sri D.C.S. Rawat, Amicus Curiae for the appellant.
Sri Sudhir Chaudhary, learned A.G.A. for the State.

**Hon'ble J.C.S. Rawat, J.**

This is an appeal against the judgment and order dated 16.09.2004 convicting the appellant u/s 304 Part II I.P.C. and sentencing him to undergo R.I. for ten years. Feeling aggrieved by the said judgment and order, the present appeal has been preferred.

The facts in nutshell are that the accused-appellant is the son of the deceased-Bhawani Ram and they were living separately in their house. On 08.08.2003 in between 9:00-10:00 pm., the deceased-Bhawani Ram went to give food to his son Dinesh Chandra-appellant at his residence. When the deceased reached there, his son Dinesh Chandra-appellant assaulted his father-Bhawani Ram and thereafter, he bolted the door inside the room. The cries of Bhawani Ram were heard by the persons residing in the nearby localities and they informed the wife of the deceased that they had heard some noise of Bhawani Ram and the Gram Pradhan was also informed about the same. The wife of the deceased, the Gram Pradhan and other people came at the spot and opened the door and found the deceased-Bhawani Ram in a precariouos condition. The deceased had sustained the injuries on his person. The Patwari was informed on phone by the Gram Pradhan. Thereafter the deceased was taken to the hospital Ranikhet where he was found dead and his post mortem

was conducted. The matter was reported by the Gram Pradhan to the police on 09.08.2003. The matter was investigated by the police and submitted the chargesheet against the appellant. The accused was charge u/s 302 I.P.C.

The accused-appellant denied the charges and claimed the trial.

The prosecution in support of his case examined Manju Arya-PW1 who lodged the written report in the Police station. Smt. Parwati Devi-PW2, Mohan Ram-PW3, Smt. Nandi Devi-PW4 and Smt. Bhagirathi Devi-PW5 respectively. Dr. Suresh Chandra Pant-PW6 and Investigation Officer Patwari Mahesh Chandra as PW-7.

The statement of the accused-appellant was recorded u/s 313 Cr.P.C. and he denied the prosecution case and stated that he had assaulted his father-deceased outside his house and the deceased fell down and he took him inside the house and bolted the door from inside. But his father did not sustain any injury. He further alleged that subsequently in the same night he fell down from the staircase and sustained the injuries and died in the house itself. The deceased was taken to the hospital and he also accompanied him. The appellant had further sated that the witnesses Manju Arya-PW1, Smt. Parwati Devi-PW2, Mohan Ram-PW3, Nandi Devi-PW4 had given true account of the incident.

After appreciation of the evidence, the learned Sessions Judge convicted the appellant u/s 304 Part-II I.P.C. and sentenced him for a period of 10 years R.I.

I have heard learned counsel for the parties and perused the record.

This case rests on the circumstantial evidence and the learned Sessions Judge had held that there are sufficient circumstantial evidences against the appellant to connect with the crime. He had stated that the deceased was lastly seen alive in the company of the appellant immediately before the incident. It is also in the evidence that the deceased and the appellant were inside the house and the

appellant committed the marpeet an he bolted the door inside the room. It is also in the evidence that when the appellant was assaulting his father, the prosecution witnesses heard the noise of the deceased and it is also in the evidence that the deceased was crying and telling to the appellant indicating his name not to beat him. Thereafter, the witnesses reached at his house where the appellant found the door bolted inside. When the door was got opened by the witnesses, they found that there were injuries on the person of the deceased and his condition was precarious. The appellant was inside the room. It also leads to take inference that immediately before opening the door, he was alive and his cries were heard and when the door was opened he was found in an injured condition and ultimately he was declared dead by the doctor. This fact further leads an irresistible inference that it was the appellant who committed the murder of his father. The learned Sessions Judge had also taken into the consideration that the appellant had also admitted that he assaulted his father and his father fell down on the staircase and thereafter he died. The learned Sessions Judge has correctly held that there was a staircase in between the ground floor and the first floor which consists of two to three stairs only. The deceased sustained the following injuries on his person:-

1. *Abraded contusion 2 cm x 2 cm. on outer aspect of left upper arm 8 cm. above left elbow.*
2. *Contusion 8 cm. x 6 cm. over front of the right shoulder and upper part of the right upper arm.*
3. *Contusion 4 cm. x 3 cm. over right side of scalp 6 cm. above right left ear.*
4. *Contusion 4-1/2 cm. x 4 cm. over left side of scallop 12 cm. above left ear.*
5. *Contusion 3 cm. X 2 cm. over the right hip and upper part of the right thigh.*

6. *Contusion 15 cm. x 6 cm. over the front of right leg 3 cm. above the right ankle.*
7. *Abrasion 6 cm. x 2 cm. over the front of the left leg 11 cm. above the left ankle.*
8. *Multiple abrasions (seven in all) over outer aspect of the left forearm and dorsum of the left hand.*
9. *Contusion 10 cm. x 3 cm. over the lower part of the front of the chest on left side near left postal margins.*

The perusal of the injuries reveals that the deceased sustained the injuries almost every part of the body. The nature and place of the injuries leads to take an inference that it cannot be the result of a single fall in two or three staircase. If the deceased would have fallen down from the staircase, the appellant should have immediately informed his mother who was outside the house. It would not have been his conduct to keep silence and more over to bolt the door. This fact can also not be side stepped.

The learned Amicus Curiae did not challenged the propriety of the findings recorded by the learned Sessions Judge to come to the conclusion of the conviction of the appellant. He, however, only challenged that the sentence may be reduced. He also relied upon the decision in which the Apex Court has held that this type of cases did not come within the purview of u/s 302 I.P.C. but it would come within the purview of 304 Part-II I.P.C. However, the learned Sessions Judge had convicted the appellant u/s 304 part-II. The learned counsel for the appellant also relied upon the decision of **1981 SCC (Cri) 768 Jagrup Singh Vs. State of Haryana.** In the similar circumstances, the Apex Court has awarded a sentence for a period of seven year R.I. Thus, it is well settle principle of law that the sentence should commensurate with the offence. The learned Sessions Judge has held that the offence comes within the purview of 304 Part-II I.P.C. It would be just and appropriate in this matter to

Punish the appellant and sentence him to seven years R.I. Instead of 10 years R.I.

In view of the foregoing discussion, the appeal is partly allowed. The conviction of the appellant u/s 304 part-II I.P.C. is maintained. The appellant is sentence to suffer R.I. for a period of seven years instead of ten years as awarded by the learned Sessions judge.

**(J.C.S. RAWAT, J.)**

29th June, 2006
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